IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

Crl.Rev.Pet.No. 1486 of 2007()

C.C.NO. 181 OF 2003 OF J.F.C.M., RAMANKARAY
CRA.NO. 654/2004 OF ADDL.S.J., ALAPPUZHA

REVN. PETITIONER:

PURUSHOTHAMAN VASU,S/O.VASU,THUNDIYIL, HOUSE,KUNNAKARY P.O,KIDANGARA,KUTTANAD TALUK.

BY ADV. SRI.M.ESAKKI ACHARI

RESPONDENTS:

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1. GEORGE JOSEPH,CHENNATTUSSERY,RAMANKARY, ALAPPUZHA DISTICT.

2. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KERALA ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 11/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. No. 1486 of 2007

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Dated: 11-09-2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.181 of 2003 on the file of the J.F.C.M., Ramankary, challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner contended that the revision petitioner is a daily wage earner who had not entered into any transaction with the complainant P.W.1, that his sister had pawned gold ornaments weighing 174 sovereigns with P.W.1 that he also had pledged gold ornaments with P.W.1 who was committing criminal breach of trust by taking blank signed cheques and the cheque in question is one such cheque and those circumstances would rebut the presumption under Sections 118 and 139 of the Negotiable Instruments Act in the light of the decisions reported in **2001 (3) KLT 950 and 2007 (1) KHC 698.**

5. I am afraid that I cannot agree with the above submissions. The acused had admitted his signature in Ext.P1 cheuqe which was for an amount of Rs. 1,40,000/-. The complainant filed proof affidavit before the trial court to the effect that the said amount was borrowed by the petitioner. Nothing was brought out to disbelieve him during cross-examination. The Courts below have concurrently held that the ingredients of Section 138 of the N.I. Act have been fully satisfied in this case and have accordingly recorded the conviction for the above said offence. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the

oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Having regard to the facts and circumstances of the case, I am, however, inclined to modify the sentence imposed on the revision petitioner. Accordingly, if the revision petitioner pays to the first respondent complainant by way of compensation under Sec. 357 (3) Cr.P.C. a sum of **Rs. 1,55,000/- (Rupees one lakh fifty five thousand only)** within **six months** from today, then he need to undergo only imprisonment till the rising of the court. If the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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